

I am heartened by the conversation we are having on the floor today and I am grateful to all of my colleagues for their engagement and involvement on this critical issue. I have heard some questions about the technical implementation of the Military Justice Improvement Act mentioned on the floor today and during the past few months and I would like to address those concerns.

First of all, thanks to feedback that we received about the MJIA, we made some technical changes to the amendment that I would like to note.

One such concern was the omission of the Coast Guard – we have now included the Coast Guard in the amendment.

Another concern we heard about was how to handle attempts of crimes, both in the new system and those that are excluded. In the amendment, conspiracies, solicitations and attempts have all been included.

We were also asked about crimes that happen simultaneously—for example, what if during a sexual assault, crimes are also committed that fall under the old system? In order to clarify any confusion about this question, the amendment says that all known crimes will be charged under the new system.

There were also questions about whether the convening authority will be able to pick the judge, prosecutor and defense counsel. The newly filed amendment has been clarified to ensure that it is clear that the new, independent, convening authority has the same power as the previous convening authority – the commander – in overseeing the

process of convening a trial. The processes for detailing judges, prosecutors and defense counsels remains as they are today.

Other concerns we have heard seem to take as a negative the fact that the MJIA leaves some issues up to the military to implement.

We see this as one of the strengths of the MJIA.

We wanted to ensure that the military had the ability to best interpret and implement the legislation in a way that was effective for the whole military, and for each service, each of which have slightly different systems.

Let me give you an example. Some have argued that that plea bargaining will not work under our system. That is not true. The amendment transfers the commander's responsibilities for convening authority to the office of the Chiefs of Staff of each service; therefore, the offices of Chiefs of Staff will now have the authority to oversee pre-trial agreements.

We specifically leave interpretation and implementation of the plea bargain up to the military to ensure that it is most expeditious—therefore the military can choose to include the commander's perspective in the pre-trial agreement conversation and send the case back to him or her for non-judicial punishment or summary court martial.

Let me give you another example – Article 32 is not explicitly mentioned in the amendment. This is intentional. Most if not all of the members of this body agree that the Article 32 hearing needs to be fixed, but equally that it must be maintained. Because under the MJIA a trained, independent prosecutor will now be making the decision about

whether to go to court martial, this may change the way that Article 32 may best be implemented. We want to leave the military, and these trained prosecutors, with the ability to best implement the UCMJ.

I have also heard a lot of questions about non-judicial punishment. As I've said all along, the amendment leaves all crimes with punishment under 1 year of confinement, and 37 military-specific crimes with the commander, thereby leaving the vast majority of crimes punishable by courts martial in the hands of commanders. However, to suggest that crimes as serious as rape and murder be handled with anything but a clear look at the evidence is at the heart of the importance of this amendment. If evidence exists to send a case to court martial, there is absolutely no reason anyone should consider non-judicial punishment as an option. This is exactly why this decision should be in the hands of an impartial attorney.

Further, the amendment even allows for a failsafe if the independent JAG decides that there is not enough evidence to proceed to trial that the charges would not be appropriately addressed at a court-martial, then the commander would still be able to exercise non-judicial punishment. In the event that the military member demanded a trial by court martial, the decision authority would at that point still be able to send the charge to the convening authority for referral to trial. There is nothing unique about this situation.

I want to assure all of my colleagues that I have spoken to military justice experts and to retired JAGs about how to get ensure that the Military Justice Improvement Act addresses potential issues and to ensure that the military has the ability to implement it in the best manner possible.

Thank you